

Inventor: Krassen Dimitrov  
Serial No.: 09/898,743  
Filed: July 3, 2001  
Page 2

Group II: Claims 23 through 33, drawn to a method of attaching a label to a nucleic acid;

Group III: Claims 16 through 22, and 34 through 49, drawn to a method of producing a population of labels and nucleic acid probes; and

Group IV: Claims 50 through 77, drawn to a method of detecting a nucleic acid analyte.

Applicants traverse the Restriction Requirement for the reasons stated below. Nevertheless, in order to be responsive to the Office Action, Applicants elect the claims of Group I, claims 1 through 15 and claims 78 through 84, directed to a diverse population of labels and a labeling kit. Applicants reserve the right to pursue prosecution of the non-elected claims in a later filed application claiming the benefit of priority of the above-identified application.

Applicants traverse the Restriction Requirement with respect to the division of the claims of Group I from the claims of Groups II, III, and IV. Applicants submit that, while the claims of Group I are patentable distinct from the claims of Groups II, III and IV, a thorough search of the elected claims of Group I will include art relevant to the claims of Groups II, III and IV. In particular, the claims of Groups I through IV are related compositions and methods directed to the design and use of a diverse population of labels. Applicants submit that search

Inventor: Krassen Dimitrov  
Serial No.: 09/898,743  
Filed: July 3, 2001  
Page 3

and examination of the entire application does not pose a serious burden to the Examiner.

With respect to the division of the composition claims of Group I from the method claims of Groups II and III, Applicants submit while the claims of Group I and Groups II and III are patentably distinct, a thorough search of the elected claims of Group I will include art relevant to the claims of Group II and III. In particular, a thorough search of compositions containing a diverse population of labels bound to a nucleic acid necessarily will reveal the methods in which such compositions are generated and, therefore, will encompass a search of the method claims of Groups II and III which recite these compositions. For example, a search of a composition of unique labels bound to a nucleic acid molecule would include a search of methods in which such labels are produced, such as the methods recited in the claims of Groups II and III.

With respect to the division of the composition claims of Group I from the method claims of Group IV, Applicants submit while the claims of Group I and Group IV are patentably distinct, a thorough search of the elected claims of Group I will include art relevant to the claims of Group IV. In particular, a thorough search of compositions containing a diverse population of labels bound to a nucleic acid necessarily will reveal the methods in which such compositions are used and, therefore, will encompass a search of the method claims of Group IV which recite these compositions. For example, a search of a composition of unique labels bound to a nucleic acid molecule would include a

Inventor: Krassen Dimitrov  
Serial No.: 09/898,743  
Filed: July 3, 2001  
Page 4

search of methods in which such labels are used, such as the methods of detecting a nucleic acid analyte recited in the claims of Group IV.

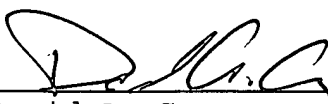
Moreover, the claims of Group I, while patentably distinct from the claims of Groups II, III and IV are related such that the division of the claims into four separate groups will result in a duplicative effort by the U.S. Patent and Trademark Office. Since joint examination of claims 1-84 will not result in a serious burden on the Examiner, rejoinder of Group I with Groups II, III and IV, respectfully is requested.

#### CONCLUSION

Applicants appreciate the Examiner's reconsideration of the Restriction Requirement. The Examiner is invited to call the undersigned agent or Cathryn Campbell if there are any questions regarding this application.

Respectfully submitted,

December 9, 2002  
Date

  
\_\_\_\_\_  
David A. Gay  
Registration No. 39,200  
Telephone No. (858) 535-9001  
Facsimile No. (858) 535-8949

CAMPBELL & FLORES LLP  
4370 La Jolla Village Drive, 7<sup>th</sup> Floor  
San Diego, California 92122  
USPTO CUSTOMER NO. 23601